

AMERICAN ARBITRATION ASSOCIATION
230 SOUTH BROAD STREET, 12TH FLOOR
PHILADELPHIA, PA 19102-4106

Case No. 14 390 01250 12

In the Matter of Arbitration Between
CITY OF PHILADELPHIA,

Employer

and

FRATERNAL ORDER OF
POLICE, LODGE #5,

Union

OPINION
AND
AWARD

ARBITRATOR:

Robert E. Light, mutually chosen
by the parties pursuant to the
rules and regulations of the
American Arbitration Association

HEARING:

October 16, 2013 in Philadelphia, PA.

APPEARANCES:

For the City

Margaret J. Theranger, Esq., Asst. City Solicitor
Gregory Malkowski, Captain
Dr. C. [REDACTED] H. [REDACTED]

For the Association

Marc Gelman, Esq. (Jennings Sigmond, et al)
John McGrody, Union Representative
William Kline, Grievant

ISSUE:

Was there just cause for the 30 day suspension
imposed on Police Officer William Kline?

BACKGROUND

A hearing in this matter was held on October 16, 2013 with both sides present and duly represented by counsel and where both parties were afforded full and complete opportunity to offer evidence and argument in support of their respective contentions. Both sides made oral summations and, as was agreed at the hearing, the question of remedy, if any, was bifurcated.

William Kline is a police officer in the City of Philadelphia and has served in such capacity since April, 1999. He was served with a Notice of Suspension dated July 25, 2012, which Notice indicated that "... you are suspended without pay from the above position for a period of thirty (30) calendar days...." the officer was charged with Insubordination Section 4-002-10 (Refusal to promptly obey orders from a superior officer) and Insubordination Section 4-003-10 (profane, insulting, or improper language, conduct, or gestures toward, in the direction of, or in relation to, a superior officer).

The events in question leading to the discipline imposed on the grievant occurred on February 22, 2011. Testifying on behalf of the City was Sergeant S. [REDACTED] W. [REDACTED] and Dr. C. [REDACTED] H. [REDACTED]. The grievant testified in his own behalf at the hearing. Sgt. W. [REDACTED] testified respecting her explanation to the grievant that he had to fill out certain paperwork and that the visit that day was considered an initial visit under the City's policies. She stated that the grievant refused to fill out the paperwork, after having been asked to do so several times. She then ordered him to do so but once again he refused. Approximately two hours later, after apparently being advised to do so by an FOP official, he did complete the paperwork. During the course of the interaction between the Sergeant and the grievant, Sgt. W. [REDACTED] testified that he was aggressive towards her with his finger pointing approximately two inches from her face. Further,

she stated that the grievant said "H [REDACTED] will never get that paperwork." She explained that she viewed his actions to be aggressive and threatened her authority.

Dr. C [REDACTED] H [REDACTED] [REDACTED] of the City for over [REDACTED] years, testified at the hearing as well. He explained that the grievant was resistant to fill out the form but eventually did so approximately one to one and one-half hours after having been directed to do so. Dr. H [REDACTED] said that the grievant was abrasive and that the medical records finally faxed to him were very hard to read. Eventually, the Doctor stated that he did get the original record.

The grievant testified that he believed that his medical information was leaked by Dr. H [REDACTED] and that he did not fill out the form in question because, according to his testimony, he stated that he already had filled one out and did not wish to fill out another one. It was only upon the intercession of the FOP representative who told him to fill it out that he, in fact, did so. As respects the interaction with Sgt. W [REDACTED], the grievant stated that he did not use any profanity and that he did not act in a threatening way at all.

POSITION OF THE CITY

The City takes the position that the discipline is proper and that the grievant was insubordinate, was angry and aggressive and that the two 15 day suspensions should be upheld. It points out that under the Disciplinary Code the minimum suspension is 15 days each which was imposed in this case. It cites the testimony of the two City witnesses and it maintains that they were credible and that the discipline should be sustained in full.

POSITION OF THE ASSOCIATION

The Union, on the other hand, argues that what occurred on the day in question was not insubordination. While it acknowledges that the grievant was "reluctant" to fill out the form, once he was directed to do so by his union representative, he in fact did so. While the Union

acknowledges that perhaps the grievant gave the City representatives a "hard time," nevertheless his actions on the day in question did not rise to the level of insubordination so that it requests that the grievance be sustained and that the grievant's record be expunged respecting the 30 day suspension and that he be made whole.

DISCUSSION

The arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel as set forth at the hearing, the contract and exhibits prior to reaching his decision. Initially, the arbitrator notes that the grievant has been charged with a violation of the City's Disciplinary Code specifically Sections 4-002-10 and 4-003-10. Section 4-002-10 is a charge which states that "Refusal to promptly obey proper orders from a superior office." Section 4-003-10 states that "Profane, insulting or improper language, conduct, or gestures towards, in the direction of, or in relation to, a superior officer." Each of those charges carries with it, for the first offense, a suspension of 15 to 30 days. In this case, the City saw fit to impose the minimum suspension for each charge, namely 15 days.

It is axiomatic in the field of labor relations that employees must "obey now -- grieve later" proper directives of management. Not doing so normally carries with it the imposition of discipline, which was the situation in the instant case. There are exceptions to that doctrine but the exceptions normally deal with safety or health concerns, absent in this case. The inquiry in this area is typically for the arbitrator to ascertain whether the employee's refusal is justified under all of the facts and circumstances of the case. Based upon the facts in this case, the arbitrator finds that the grievant's refusal to obey this reasonable directive was totally improper. After all, the police force is a paramilitary organization and it is incumbent upon the employees

to follow the reasonable directives of supervision, which was absent in this case. While the grievant attempted to explain his reasons for not initially following the reasonable orders given to him, the arbitrator finds those explanations to be unavailing. Put another way, the grievant should have followed the orders, should not have acted in the manner that he did towards the doctor and the Sergeant and, if he thought there was any problem with what he was told to do, he simply should have filled out the form and filed a grievance later. That was not done here. In fact, it was only upon the proper advice and reasonable actions of the Union representative with whom he communicated, that the form was finally filled out.

The arbitrator notes that we are dealing here with a police force, a paramilitary organization where respect and adherence to proper orders of a superior is part and parcel of the job function of a subordinate. Quite clearly, the grievant's actions here did not comport with what a police officer who is properly performing his functions is supposed to do. The arbitrator does indeed find that the grievant was insubordinate to both Sgt. W [REDACTED] and [REDACTED] Dr. F [REDACTED]. As respects the suspension imposed upon him, pursuant to the Philadelphia Police Department Disciplinary Code, Article VI, entitled Insubordination, the City saw fit to charge the grievant with Insubordination, a first offense which could have brought with it a 30 day suspension. In fact, the City imposed the minimum 15 day suspension for each offense for a total of 30 days. The arbitrator will not disturb the City's action in that regard. Therefore the grievance is denied.

Therefore, the undersigned having duly heard all of the proofs and allegations of the parties to this proceeding makes the following award:

AWARD

There was just cause for the 30 day suspension imposed on Police Officer William Kline.
Grievance denied.




ROBERT E. LIGHT, ARBITRATOR

AFFIRMATION

I, Robert E. Light, do hereby affirm upon my oath as Arbitrator that I am the individual
described in and who executed this instrument, which is my Opinion and Award.

Dated: October 23, 2013



Robert E. Light, Arbitrator